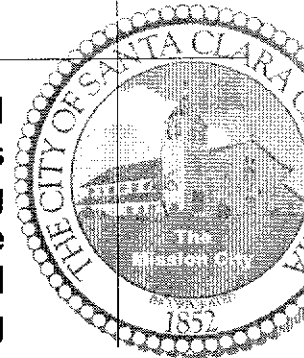


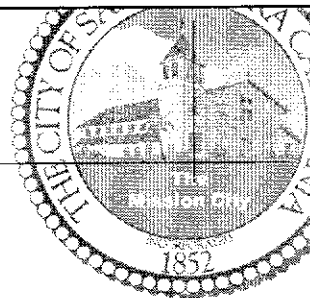
# **Binding Arbitration Ballot Measure**

Background Information and  
Responses to Council Questions  
at April 11, 2006 meeting  
Regarding Proposal from Police  
Officers' Association and  
Firefighters' Union for Binding  
Interest Arbitration Ballot Measure  
for November 2006 Election



## **Overview**

Responded to questions  
Replayed session on Channel 15  
Community forums  
Set April 25 as study Session  
May 9 decision on proposal



## Arbitration Definitions

- **Arbitration:** (Advisory or Binding) A method of resolving disputes in which a third-party, or arbitrator, hears evidence and issues a decision.
- **Binding Interest Arbitration:** Arbitrator issues an opinion that is final and binding on the parties.
- **Advisory Arbitration:** Arbitrator issues an advisory opinion that the parties may choose to accept or not.
- **Mediation:** Resolving disputes in which a neutral mediator, assists the parties in reaching agreement. Mediator does not decide the dispute, but assists the parties in finding areas of agreement.
- **Voluntary Mediation:** The parties choose whether or not to go to mediation.

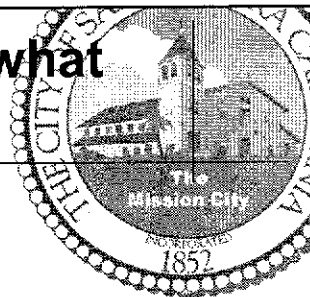
3

## Arbitration Definitions

- **Involuntary Mediation:** By prior agreement or court order or arbitrator, parties must engage in mediation.
- **Last Best and Final:** Last package offer submitted by each. Some binding arbitration procedures have to take one LBF or the other – individual issues cannot be settled separately.
- **Issue-By-Issue:** Either arbitration or mediation. Issues are submitted, a settlement may be reached, or decision may be issued on individual issues.
- **Interest Arbitration:** (Advisory or Binding) Arbitrator issues decision resolving disputes which remain after negotiations, but no agreement has been reached. Establishes terms of the agreement.
- **Grievance Arbitration:** A process in which the arbitrator interprets and applies an existing agreement to a particular dispute.

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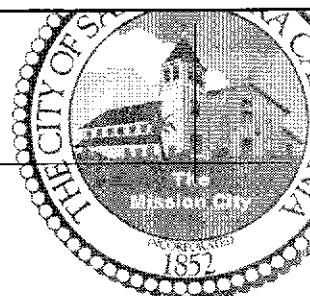
## **If signatures obtained, what are costs to the City?**



A successful initiative process would cost approximately \$65,322 -- \$82,422

5

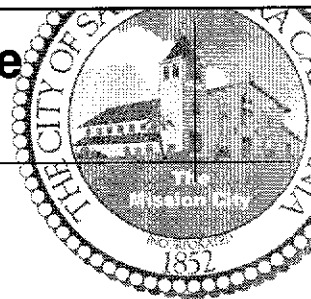
## **If signatures obtained, who would pay?**



City is responsible to pay for the election.  
The City may accept an offer by the proponents to pay for the costs of the election, but would not be able to require this payment.

6

## How does funding of the initiative work?

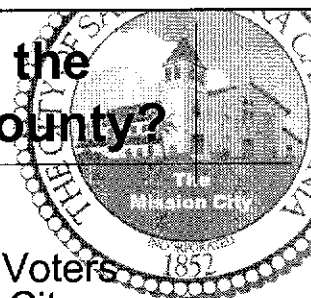


Funding for the initiative process includes:

- signature verification
- election costs
- publication and translation services.

7

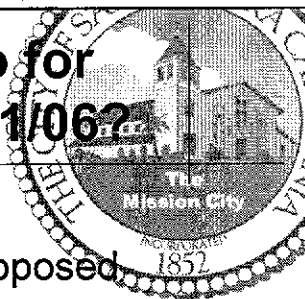
## Why August 11th to get the ballot measure to the County?



Final date that the Registrar of Voters accepts an election called by a City.

8

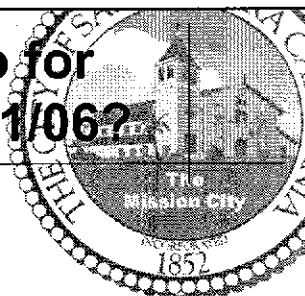
## **What was source of info for Manager's report on 4/11/06?**



1. Attorney's Office analysis of proposed Charter amendment:
  - Specific clauses in the amendment
  - Conflicts with the Charter
  - Policy documents: City Code, Civil Service Rules and Regulations, CMD's, FCD's and PCD's
  - legal effects of Charter and state law.

9

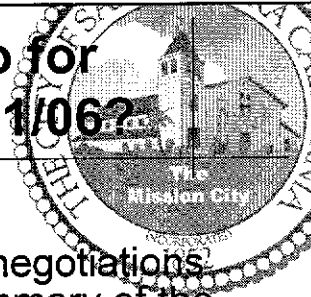
## **What was source of info for Manager's report on 4/11/06?**



2. HR Department surveyed 13 cities in NorCal with binding arbitration. Survey covered arbitration language, history; and costs.

10

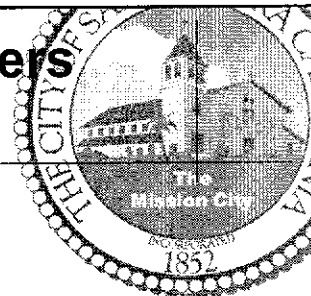
## **What was source of info for Manager's report on 4/11/06?**



3. Results of '03 police and fire negotiations prepared by HR including summary of the MOU approved by Council and bargaining groups.
4. Research of available materials from other cities and League of California Cities.

11

## **Can police and firefighters go on strike?**

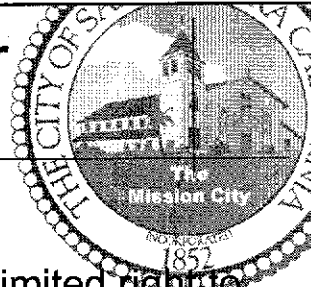


Since 1959, strikes by firefighters are prohibited by California Labor Code section 1962.

Strikes by police officers are "per se" illegal under California case law, since 1989.

12

## **Can other employees or groups strike?**

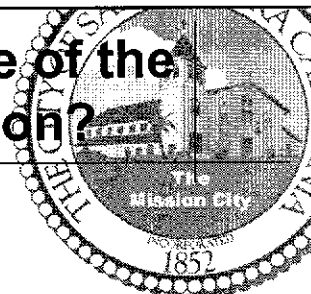


Non-safety employees have a limited right to strike.

If strike impacts delivery of essential services and creates likelihood that serious harm will be experienced unless immediate action is taken and an emergency will be created, the local agency may seek a court order to stop the strike.

13

## **Who wrote the language of the amendment for arbitration?**



Mr. Alan Davis, attorney for the Public Safety Unions wrote the language for the proposed ballot measure for binding arbitration for Police Officers' Association (POA) and Firefighters' Union (FF).

14

## Any inconsistency in Charter with proposed amendment?

The measure contains language that conflicts with the following City documents, or may impact or even override:

1. **City Charter:** Council authority over fiscal matters; Manager authority over budget & administrative matters, especially hiring and disciplinary matters; Fire and Police Chief authority over operational issues
2. **Civil Service Rules:** examinations, grievance review process, and transfers
3. **Memoranda of Understanding (MOUs):** reservation of management rights clauses

15

## Any inconsistency in Charter with proposed amendment?

The measure contains language that conflicts with the following City documents, or may impact or even override:

4. **Employer-Employee Relations Ordinance:** impasse procedures
5. **City Manager Directives:** many directives, including but not limited to grievance procedures, meal policies, sick leave usage, training, off-duty employment, flexible work schedules, conference and meeting attendance, recovery of court expenses, examinations, workplace security.

16



## Any inconsistency in Charter with elected Chief of Police?

*Police Chief's power and requirement to preserve the public peace will now be shared with an arbitrator panel on matters taken to binding arbitration. Further, ability to 'directly supervise' as a mandate from the citizen's as an elected chief is similarly impacted for the same reason.*

*The rationale for having an elected Police Chief is to provide the citizen the ability to determine who will be making those management decisions. Binding arbitration will prevent that for all matters taken to arbitration.*

17

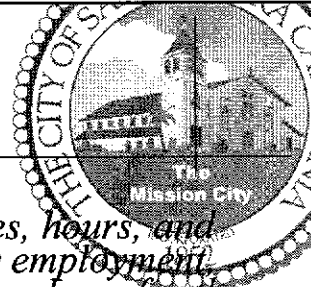
## What is the impact on our civil service process? Other cities?

Language is somewhat vague.  
Measure may change civil service process;

- Hiring,
- Promotional qualifications,
- Disciplinary decisions.

18

## Includes grievances? Other cities?



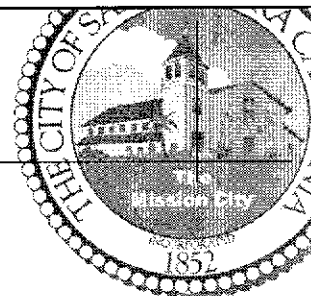
*"...all matters relating to the wages, hours, and other terms and conditions of City employment, including the establishment of procedures for the resolution of disputes concerning the interpretation or application of any negotiated agreement shall be subject to negotiation."*

And:

*"All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations. . .are subject to arbitration".*

19

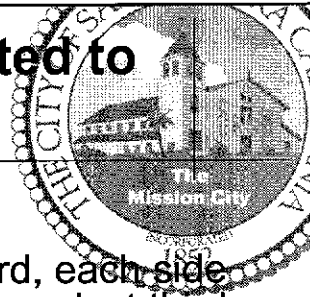
## Includes grievances? Other cities?



Other cities have similar language in their charter relating to binding arbitration.

20

## Who is typically appointed to arbitration boards?



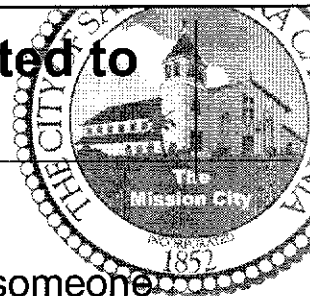
Proposed = three-person board, each side choosing own appointees, who select third.  
No restrictions.

Considerations include:

- Any expertise in financial, operational, managerial or other relevant issues;
- Ability to invest the time in negotiating and drafting decision with the other arbitrators;

21

## Who is typically appointed to arbitration boards?



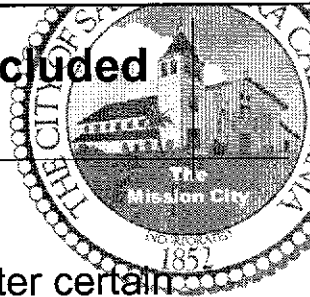
Typically each side appoints someone supportive of viewpoint:

- Human Resources Director
- Assistant City Manager
- Assistant City Attorney

May choose professional arbitrator.

22

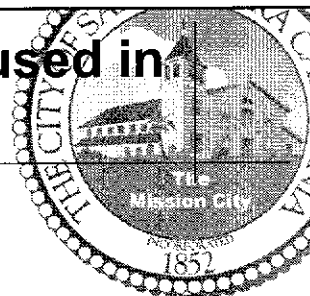
## Can a Sunset Clause be included in Charter amendment?



- Clause terminates all or part after certain date.
- Normally with funding or project limited to a time period or date.
- Does not prevent future legislation making it permanent, or extending the clause for continued operation
- The City Attorney's Office is not aware of a sunset clause being used in binding arbitration.

23

## Can City resources be used in a ballot measure?

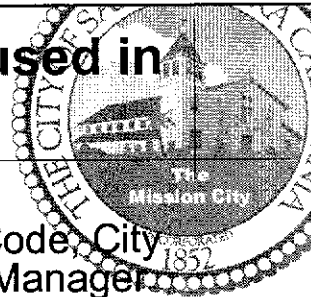


Cities may not use public resources to support or oppose a ballot measure.

Cities may use resources to inform and educate, with fair presentation of relevant information, and not to influence voters.

24

## Can City resources be used in a ballot measure?

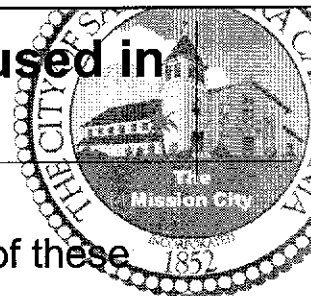


**On duty employees:** State Code, City Council Resolution, and City Manager Directive restrict ability of staff to engage in political activities.

- Work time (gathering signatures);
- City premises (handing out leaflets at City Hall or recreational centers);
- City resources (Use of computer, copier or mail system).

25

## Can City resources be used in a ballot measure?

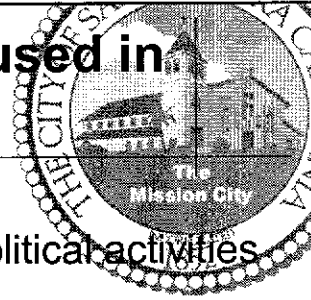


**Off duty employees.** Some of these restrictions are that:

- No political activities (Precinct walking in uniform);
- Employees not identify themselves using city title or position (While making speeches about a ballot measure);
- Employees may not use their "indicia of office" (badge or letterhead).

26

## Can City resources be used in a ballot measure?

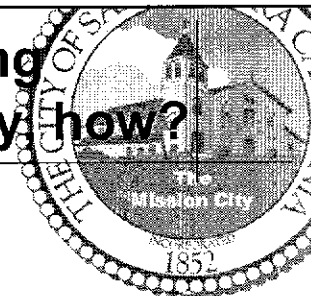


Employees may engage in political activities off-duty:

- Join citizen groups supporting or opposing a ballot measure.
- May always provide relevant, factual info.
- Police Chief is an elected position and is not subject to restrictions from such activities.

27

## Police Chief: Will binding arbitration impact safety how?



### Example:

Oakland. Early 2006 homicides tripled. Most late in week during evening. Chief ordered day shift transferred to night. The union said Chief did not have power and had to meet and confer first with union. If no agreement, the issue subject to arbitration. Chief was forced to ask Council to declare a state of emergency to provide an exception to the process.

28

## Police Chief: Will binding arbitration impact safety? how?

**Under current system:** Chief has the ability to "take all necessary actions to carry out its mission in emergencies."

Might SC officers fail to respond? No. However:

**Example:** Chief decides what appropriate number of officers on duty. Arbitrator may decide two officers in every patrol car =

- Cut the number of patrol cars per shift, or
- Double number of officers from 147 to 294 (an expensive proposition).

29

## Police Chief: Will binding arbitration impact safety? how?

**Oakland:** Binding arbitration process "painful" Will be asking the voters to rescind binding arbitration in upcoming election.

**Oakland case:** Termination for a serious case of officer misconduct.

Arbitrators ruled to give officer a suspension. City now has police officer it believes is unfit or dangerous working in the community that.

30

## More details on previous employee negotiations?

After the cycle, discussed process and ways to improve it.

- Share financial data prior to start.
- Written contract language exchanged.
- Tentative agreements signed as they occur.
- Develop teams reflective of the City's philosophy and approach negotiations as a partnership.
- Set schedules in advance with flexibility.
- Communication, mutual respect at all times.
- Develop clear ground rules.
- When problems arise reps could request a meeting with Manager to resolve concerns.

31

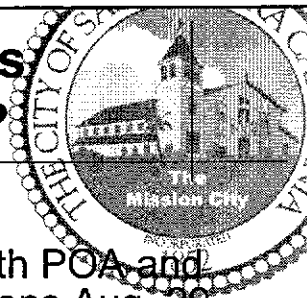


## More details on previous employee negotiations?

### Results:

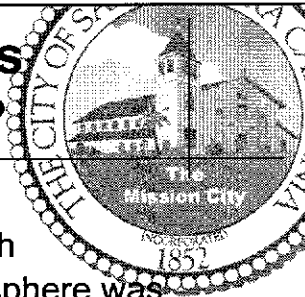
- Since, no MOU negotiations with POA and FF Unions. Next POA negotiations Aug. 29, '06 . FF Union begins Oct. 1, '07.
- Both Chiefs meet regularly with Union Reps.
- During '05 negotiations with miscellaneous groups, all items agreed upon were implemented.

32





## More details on previous employee negotiations?

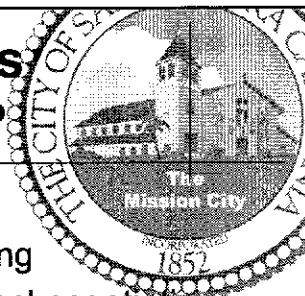


### In 2005:

- Focused on a collaborative approach
- Despite economic challenges atmosphere was improved
- Contract language was exchanged
- Financial information reviewed with the groups in meetings prior to proposals
- Meeting schedule agreed upon prior to the start of negotiating
- Most groups had some or all different participants in their negotiating team

33

## More details on previous employee negotiations?



### In 2005:

- Groups requested coalition bargaining
- First time this approach used in formal negotiations
- Mutual respect at table throughout the process
- MOU's compiled, signed and adopted by Council within two weeks
- Voluntary Mediation was participated in
- All groups expressed appreciation for the improved process
- Council, Manager signed document emphasizing commitment to conducting an excellent employee negotiations process.

34

## **What were the primary issues 2003?**



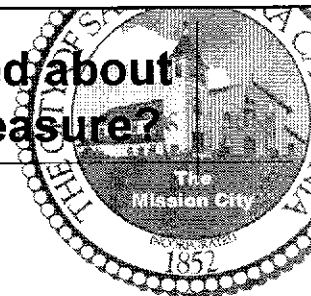
Wages, benefits and working conditions.

The Agenda Report for the April 11, 2006 Council meeting included Attachment E and Attachment F.

The attachments provide a summary of the negotiation issues, proposals and the results of each issue.

35

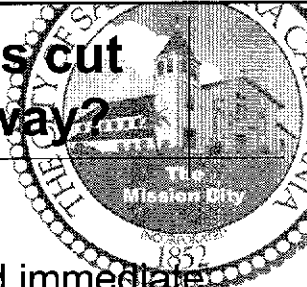
## **City's Ethics Advisor asked about Union paying for ballot measure?**



No. The Ethics Advisor was not consulted on this question.

36

## Agencies where services cut or local control taken away?

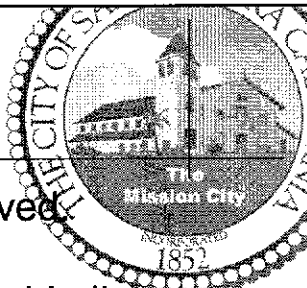


**City of Gilroy:** Arbitrator required immediate increases of firefighters from 6 to 8 per shift.

- Incurred overtime costs for additional staffing while hiring firefighters
- Had to fund new firefighters salaries and benefits
- Department budgets reprioritized
- No spending increases with increased operation costs

37

## Voting history as a ballot measure?



Four elections held. Two approved.  
Two failed.

- **Sunnyvale 1998 Election:** Two binding arbitration measures – both failed
- **Oroville 2004 Election:** Binding arbitration measure – passed
- **Monterey 2002 Election:** Binding arbitration measure – passed
- **San Mateo 1991 Election:** Two binding arbitration measures – both failed

38

## Legal or ethical concerns accepting \$57k contribution?

- Not illegal to accept the contribution from unions.
- May create perception that the Council is in support.

### Consider:

- New groups could point to current request as a new practice and request similar treatment, eliminating need for petition drive.
- City has consistent process. Charter changes are made following recommendations of citizen based Charter Review Committee.

39

## Fair to change process for other employees?

- Non-public safety bargaining groups may feel they should receive similar options.
- President of one City bargaining group contacted staff to be considered for this request.
- Most cities with binding arbitration restrict it to Fire and/or Police
- Vallejo has binding arbitration for all employee groups.
- Staff would have same concerns about the loss of local decision-making authority for Miscellaneous Bargaining Groups

40

## **Other units taken a position on request for binding arbitration?**

- Staff has not received any information indicating a formal position on the issue of binding arbitration for police and fire.
- The Human Resources Director, Police Chief and Fire Chief have all received questions from bargaining unit representatives and employees.

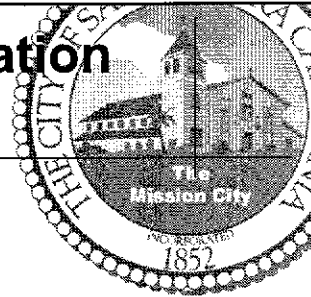
41

## **Could an award impact Silicon Valley Power?**

If the arbitrator/arbitrator panel adheres to City Charter § 1320 ("Utilities Fund") restrictions on what payments can be made from the fund should be protected as intended by the City Charter.

42

## Has there been a circulation of petitions?

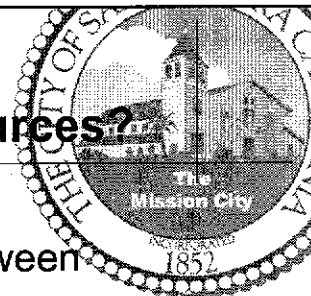


City Clerk's Office received  
"Proof of Publication" of the  
"Notice of Intent to Circulate Petitions."

Signature gathering process is underway.

43

## Caused any City financial problems or drained resources?

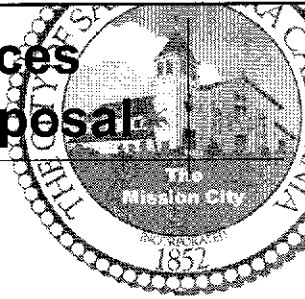


- Gilroy, question 20.
- Oakland had six decisions between '74 and '92.
- Financial impacts = 4 of 6 decisions
- Decision in '91-'92 cost \$1.3 million over what was budgeted
- During budget reductions citywide of over \$7 million
- Procedural costs of the arbitration were approximately \$235k

44

## Research other ordinances compares to the SC proposal

- Six cities reviewed
- Alameda economic issues only
- Other cities broad language



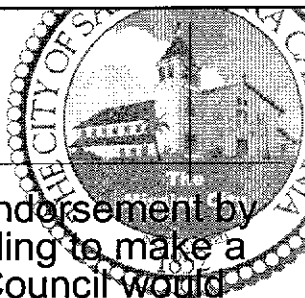
45

## Questions forwarded to public safety unions.

**Q:** Would unions promote an endorsement by Council if put on the ballot? Willing to make a commitment not to promote if Council would put it on the ballot?

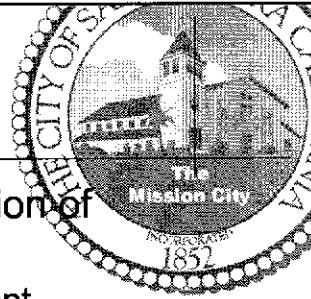
Response received from POA President.

**A:** We are not planning on promoting that the Council endorses this proposal if they put it on the ballot. We will be seeking individual endorsements and using those.



46

## Questions forwarded to public safety unions.



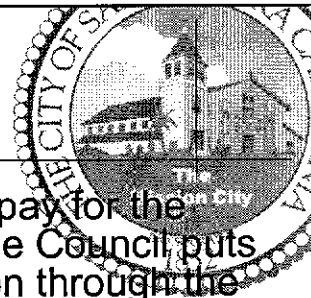
**Q:** Has there been any circulation of petitions?

Response received from POA President.

**A:** We have started circulating petitions in the City.

47

## Questions forwarded to public safety unions.



**Q:** The unions have offered to pay for the binding arbitration initiative if the Council puts it on the ballot, what if it goes on through the initiative, does offer still apply?

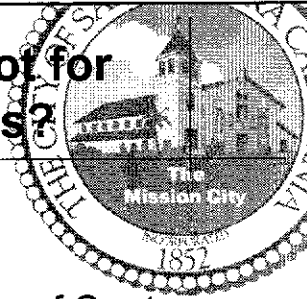
Response received from POA President.

**A:** We have only limited financial resources. If we are forced to gather the full amount of signatures to use the initiative process, we will be unable to pay the ballot costs that are incurred.

48



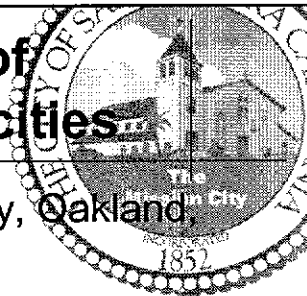
## **Binding arbitration on ballot for County? What were results?**



November 2004 election County of Santa Clara had two ballot measures  
Both measures failed.

49

## **Essential components of charter provisions in 6 cities**



Cities included: Alameda, Gilroy, Oakland, Palo Alto, and San Jose.

- City of Alameda Charter provisions are limited to specific economic issues only.
- Other five cities tend to have similar language to proposal for Santa Clara.

50

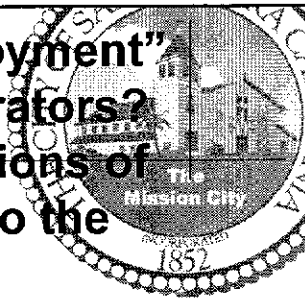
## Information regarding State Senate Bill 402 and 440



Is the proposed ballot measure constitutional?

51

**What "conditions of employment"  
may be submitted to Arbitrators?  
~~Who decides what "conditions of  
employment" are subject to the  
Board's jurisdiction?~~**



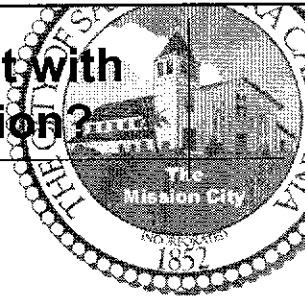
*"...all matters relating to the wages, hours, and other terms and conditions of City employment, including the establishment of procedures for the resolution of disputes concerning the interpretation or application of any negotiated agreement shall be subject to negotiation."*

And:

*"All disputes or controversies pertaining to wages, hours, or terms and conditions of employment which remain unresolved after good faith negotiations. . .are subject to arbitration".*

52

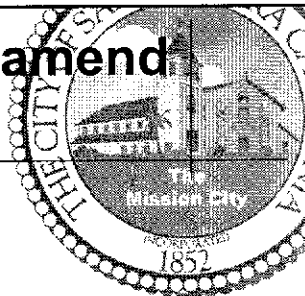
## How does measure interact with the Civil Service Commission?



The proposed measure either contains language that directly or indirectly conflict with, or, by potentially allowing submission of a broad range of issues to binding arbitration, may impact or even override Charter provisions

53

## Can City be required to amend or repeal ordinances?



Measure provides City:

*"shall take whatever action is necessary to carry out and effectuate the final Arbitration Board award and incorporate any amendments or modifications agreed to by the parties . . . ."*

54

## **Can an incorrect arbitration Award be set aside by Courts?**

Limited options available under the California Arbitration Act to set aside an arbitration award.

1. The award was procured by corruption, fraud or other "undue means";
2. An arbitrator was corrupt;
3. The rights of a party were substantially prejudiced by arbitrator misconduct;

55

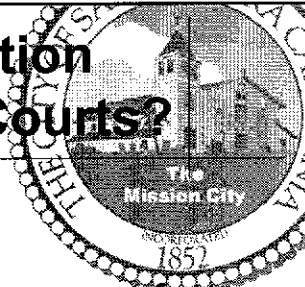
## **Can an incorrect arbitration Award be set aside by Courts?**

Limited options available under the California Arbitration Act to set aside an arbitration award.

4. The arbitrator exceeded his or her powers and the award cannot be corrected without affecting the merits of the decision; or
5. The rights of a party were substantially prejudiced by the refusal of an arbitrator to postpone a hearing, to hear material evidence, or by other conduct that violates the provisions of the California Arbitration Act.

56

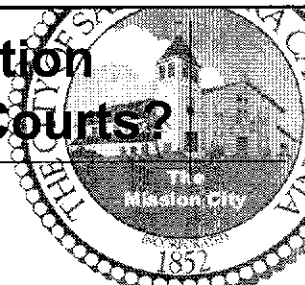
## **Can an incorrect arbitration Award be set aside by Courts?**



Even if an award is based on incorrect facts, or an incorrect interpretation or application of law, it cannot be set aside by the courts even if it causes "substantial injustice" to one of the parties.

57

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58

- 
- **Tuesday, May 2, 7 p.m.**  
Santa Clara Convention Center  
Rooms 203 and 204  
5001 Great America Parkway

- **Wednesday, May 3, 7 p.m.**  
Central Park Library  
2635 Homestead Road

